

ABSTRACT

Modification of a Public Contract

This thesis deals with the regulation of modifications made to public contracts during their term. Its aim is to critically analyse the legal regime for modifying public contracts in light of the law of the European Union (especially Directive 2014/24/EU on public procurement) and of the Czech Republic (The Public Procurement Act No. 134/2016 Coll.).

The thesis consists of three chapters. The first chapter focuses on the development of the regulation on public contract modifications from the view of both the EU and Czech perspective, and emphasizes the importance of the so called Presstext judgment issued by the Court of Justice of the European Union. The second chapter represents the most important part of the thesis, inasmuch as it critically analyses the applicable law. It is divided into two parts. The first one contains an analysis of substantial modifications to public contracts in light of the related case law. In the second part of this chapter, I try to pinpoint interpretation problems that are connected with the new provisions which define situations, in which the modification is to be regarded as non-substantial, and therefore does not trigger the need to commence a new public procurement procedure. The third chapter provides an outlook on how two other Member States of the European Union, Slovakia and The United Kingdom, have transposed the public procurement directives into their legal systems. Its objective is to highlight the discrepancies that exist between the regulations in different Member States, in spite of the existence of rather detailed rules that are set forth by the EU directives.

In the conclusion, it is argued that the transposition of the public procurement directives in the Czech Republic (as far as the modification of public contracts is concerned) has not been executed properly. The Czech national law deviates too much from the directives, which results in even higher level of legal uncertainty flowing from the new provisions. Therefore, some suggestions *de lege ferenda* are made. It is also concluded that the European Commission and Czech national authorities shall take a more active part (e.g. via clear official recommendations or opinions) in helping out the contracting authorities with the application of the new provisions.